



**Empire State  
Development**

# **ESD RFA OCT2021 Regulations and Guidelines to Entrepreneurship Assistance Centers Request for Applications**

**ISSUED: October 1, 2021**

Designated Contacts for this Request for Applications:

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## **APPLICATIONS DUE DATE AND TIME:**

**On or before October 25, 2021 at 12 NOON EST**

**Applications must be emailed by this date and time.**

**Late applications cannot be accepted**

NOTES on how to navigate these Regulations and Guidelines (“R&G”): These R&G are critical parts to the EAC Request for Application OCT2021 (“RFA”) and represent the complete RFA. Grey portions of text represent text repeated in whole within the RFA. All typeface in red are annotations referencing those areas of the RFA.

## **INTRODUCTION - stated in introduction Top of Page 2**

The mission of Empire State Development (ESD) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

### **A. Program Overview - stated in Page 2 Introduction - The Program**

The Omnibus Economic Development Law of 1987 established the original Entrepreneurial Assistance Program (EAP). In January of 2019, this law was amended and renamed the Entrepreneurship Assistance Centers (EAC) program. The amended law authorizes the Department of Economic Development d/b/a Empire State Development, through the Entrepreneurship Assistance Centers program, to issue grants to not-for-profit corporations, community colleges and boards of cooperative educational services for the development of Entrepreneurship Assistance Centers that provide services to small businesses in New York State:

- Seeking to start or are starting their own business ventures; or
- Seeking to expand their early-stage firms (1-5 years).

The emphasis is on helping small businesses: develop lasting business and acquire problem-solving skills so that minority, women and individuals with special needs learn to independently and successfully manage and grow and generate concrete results related specifically to business creation, increased sales, expanded employment, and financing secured.

These Centers are operated by community-based organizations with close ties to local residents, which enable them to adapt services to local needs and demands.

### **Stated on Page 2 Introduction - The Project**

The Project is funded from the New York State EAC Budget Appropriation of \$1.884 million (a combination of \$1.764 Million from the new FY2021-2022 budget plus \$120,000 of previous year's unexpended funds. These funds are subject to the availability of New York State funds.

### **B. Request for Applications Schedule - stated on Cover Page of RFA**

<b>Release of EAC Request for Applications OCT2021</b>	October 1, 2021
<b>Information Session</b>	October 8, 2021 at 3:00PM EST RSVP by 10/06/21 to <a href="mailto:EAC2122RFA@esd.ny.gov">EAC2122RFA@esd.ny.gov</a>
<b>Deadline for Submission of Questions</b>	October 13, 2021
<b>Deadline to Respond to Questions</b>	October 15, 2021
<b>Submission of Applications</b>	October 25, 2021 at 12:00 NOON EST
<b>Selection of EAC Candidates</b>	November 15, 2021
<b>Anticipated Contract Start Date</b>	December 1, 2021

## II. **PROGRAM GUIDELINES - stated in EAC RFA Application introduction Pg 2- The Project**

This particular Request for Application (“RFA”) to Empire State Development (“ESD”) is a competitive grant solicitation to establish Entrepreneurship Assistance Centers (“EAC” or the “Centers”) to qualified New York-based organizations. Up to six (6) grants will be awarded to organizations located in the following three (3) New York State economic regions:

- **Central NY Region** (Cayuga, Cortland, Madison, Onondaga, and Oswego counties)
- **Mohawk Valley Region** (Fulton, Hamilton, Herkimer, Montgomery, Oneida and Schoharie counties)
- **New York City Region** (limited to only Bronx, Kings and Staten Island counties)

A. **Projects** - ESD seeks applications from well-established and qualified organizations that will have the following effects in the communities in which they are located:

1. Increase business ownership and business expansion among small businesses, with special emphasis on minority group members, women, veterans and those that operate in distressed and highly distressed communities;
2. Connect small businesses to COVID-19 resources, including, but not limited to, New York Forward Loan Fund, Empire Digital Initiative, and other relevant New York State, federal or local programs;
3. Provide technical assistance to small businesses affected by COVID-19 to develop virtual business strategies for online outreach and consumption, maintain revenue and retain employees, with special emphasis on minority and women-owned firms;
4. Facilitate the creation/retention of private sector jobs;
5. Increase access to financing by minorities, women and veteran owned firms;
6. Significantly expand sales among minority, women and veteran owned firms.

**Eligibility Requirements** - The following types of organizations are eligible to apply: **stated in EAC RFA Application introduction pg 3- Eligibility Requirements and Selection**

- A not-for-profit corporation, operated by a board of directors representing community leaders in business, education, finance and government;
- A community college or university;
- A Board of Cooperative Educational Services; or
- Joint ventures between community-based organizations, local government, private and public lenders, or other service providers in the region.

In addition, the applicant organization must meet the following criteria:

1. Be located in an area accessible to minority group members, women and other target populations; - **EAC RFA Application; Introduction; Selection, page 3**
2. Is a currently registered with and in good standing with New York State prequalification and related registration standards through the Grants Reform System. This will ensure eligibility to participate in this and future RFAs and receive potential program awards. -**EAC RFA Application; Item #13 and Item #46**

3. Provide a comprehensive strategic plan for the organization. Plan narrative should include: **- included EAC RFA Application Section I Organization Information: #19 Previous Funding and Section II: Organizational Background, items #20 to #27**
  - a. a business plan of not less than 3 years in duration that should detail a narrative, that includes discussion on mission, markets served, competition, targeted regions and clients, organization infrastructure and resources to support ongoing activities, management team, advisory team and strategic plans for the next three years. Further, applicant must demonstrate that the applicant is/will be properly managed and will have the capacity to operate as an Entrepreneurship Assistance Center that will not be dependent solely upon assistance from the Program for continued viability;
  - b. a plan to coordinate use of assistance from the Program with existing Federal and local government assistance programs, and/or private sector financial services;
  - c. a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, or other services to M/WBEs and Small Businesses;
  - d. Grant proceeds shall be matched with funds from sources other than the State's on the basis of not less than 100% of the award. Matching funds shall be comparable in-kind services or equal cash value to assistance provided by the Program. ESD shall provide no financial assistance until the applicant organization has secured firm commitments for the matching funds required. Include a detailed description of the applicant's plan and likely sources of funds to match the amount of assistance provided by the Program
4. Primarily focus entrepreneurship technical assistance to members of financially distressed communities with an emphasis on minority and women owned (M/WBE)
5. Be legally able to receive and use the proceeds as herein stated.
6. Meet any other requirements herein stated for the specific purpose of the grant.
7. Be current with reporting requirements for any other ESD assistance, including any previous EAC program funding.
8. Must have met or exceeded prior ESD EAC program goals (if applicable.) Previously issued awards do not guarantee awards in this or future rounds of the program.

**B. Applications -stated in EAC RFA Application introduction page 3- Submission of Two Part Grant**

- a. Organizations must demonstrate the ability to provide EAC services in an impactful and cost-effective way independently.
- b. Applicant must demonstrate strong operational capacity to provide independent technical assistance services, such as one-on-one assistance, proven entrepreneurship training components associated with new and expanded business formation.
- c. Organizations must show in their application how the requested funding and leveraged resources can achieve greater impact by serving small business impacted by COVID-19, start-ups, growing companies, and businesses going virtual.

- d. Submit in two-part sections, Grant Application and Administrative Proposal Documentation.
- C. Designation Period, Contract Amount, and Anticipated Funding – stated in EAC RFA Application, Designation Period, Contract Amount, & Anticipated Funding page 3  
All proposals should reflect ESD funding for a seven (7) month period in the amount up to \$55,000 representing the initial partial year one (1) of this grant. The contract is anticipated to commence on December 1, 2021 and end June 30, 2022. The institution awarded an EAC designation under this competition shall be designated for a period of up to two additional years, provided the EAC's performance is deemed satisfactory by ESD, in ESD's sole discretion, at each annual evaluation. Beginning July 1, 2022, the EAC will be then eligible to receive up to \$73,500 annually, subject to the availability of State funds.
- Proposals submitted for greater than \$55,000 for partial year one (1) of ESD support will be rejected without review. If funding availability increases or decreases during the designation period, ESD will work with designees to adjust budgets accordingly.**
- Beginning July 1, 2022 ESD shall provide up to \$73,500 yearly in funding for reimbursable expenses (or a pro rata of the individual EAC allocation if funding levels change), provided the EAC's performance is deemed satisfactory by ESD, in ESD's sole discretion, and subject to the availability of State funds.
- The amount of ESD funds reimbursed to the award recipient will be based on the amount of eligible matching funds expended. ESD reserves the right to adjust the amount of an award recipient's funding based upon the availability of State funds, EAC's economic impact performance including assistance to small New York State businesses, and the EAC's ability to meet the matching funds requirements.
- D. Funding Source - stated in EAC RFA Application; introduction The Project: page 2  
The Project is funded from the New York State EAC Budget Appropriation of \$1.884 million (a combination of \$1.764 Million from the new FY2021-2022 budget plus \$120,000 of previous year's unexpended funds. These funds are subject to the availability of New York State funds.
- E. Project Timeline - stated in EAC RFA Application; introduction The Project: page 2  
The Project is funded from the New York State EAC Budget Appropriations and subject to the availability of State funds. The Project is a 2.5-year award to commence on December 1, 2021 and will be renewed on July 1, 2022 for up to two (2) additional years upon ESD's sole discretion and determination of the EAC's successful annual completion of Project goals and subject to the availability of State funds.
- F. Additional Conditions
1. If awarded, funds for the new EAC project will only be disbursed upon favorable completion and reconciliation of final report from previous EAC project. Previously issued awards do not guarantee awards in this or future awards. **EAC RFA Application Item #19**

2. ESD will establish reporting requirements to account for the utilization of grant proceeds by the EAC. The grant is to be used only for the purposes stated in the organization's application or otherwise approved, in writing, by ESD. In EAC Application Section IX: Reporting
3. All activities generated by funding from ESD, or toward which ESD grant proceeds are used, shall be conducted according to the standard business practices of the recipient organization and any agreements with ESD. EAC Application Section III: Implementation of EAC Project
4. Previously issued awards do not guarantee awards in this or future EAC grants. = EAC Application Introduction pg 3 Selection and in item 19

### III. SCOPE OF WORK.

The Program will make grants available to EACs for three general purposes: EAC Application, Section III: Implementation; Section V: EAC Project Goals, Section VI: EAC Project Implementation, Section VII: EAC Project Monitoring and Evaluation, Section VIII: EAC Project Specific Reporting & Data Maintenance

#### A. The Provision of Technical Assistance

##### EAC RFA Application; Section III: Implementation, Item #28

Funds may be used to provide technical assistance to M/WBEs and/or Small Businesses who have received economic relief loans in the year 2020/2120 or plan to apply for State launched programs, such as the New York Forward Loan Funds and other financial programs. Preference will be given to applications that emphasize the provision of one-on-one consultation and group training, while keeping and adhering to social distancing guidelines, if applicable, on such business development topics as financial record keeping and financial statement preparation, tax issues, marketing, business growth strategies, market expansions, exporting, the use of technology, etc. TA may be provided by qualified staff or outside business development consultants.

For grant proceeds to be used toward technical assistance:

1. The applicant must take specific actions to ensure the participation of M/WBEs and/or small businesses in the TA program, as well as those that are located in distressed and highly distressed areas;
2. The assistance must be directly relevant to the beneficiaries' businesses and provide help with access to capital and financial resources to achieve business retention, growth, and success.

#### B. The Provision of Entrepreneurship Training

##### EAC RFA Application; Section III: Implementation, Item #28

1. Enterprise Formation Assistance: At least one entrepreneurship training (cohort) instruction and technical assistance course(s) to help new entrepreneurs complete business plans and to help them develop a viable business. Technical assistance should

encompass refinement of business concept, revenue generation and diversification, competition, break-even analysis, financial management, market development and marketing plans.

2. Enterprise Expansion Assistance: Centers shall maintain ongoing relationships with clients who have taken the entrepreneurship course in order to assist those new businesses to become small-growth companies and, if qualified, to become certified with the Division of Minority and Women's Business Development. Enterprise expansion technical assistance shall include, but is not limited, to the following: ability to assess their current business model to pivot or strategically re-align operational processes that optimize their ability to manage growth in the current environment and access capital responsibly. This will include but not be limited to assistance with managing working capital and cash flow, increasing general management skills, new market development and the hiring and managing of employees to name a few.

### **C. Support of Following Initiatives**

#### **EAC RFA Application; Section III: Implementation, Item #29**

In addition to the above, an EAC will also support the following special initiatives:

##### **Veteran Entrepreneurship Services - Included in EAC Application Section III: Implementation, item #32**

- EAC provides entrepreneurship services to veterans interested in starting a business or expanding an existing business which includes but is not limited to: (1) counseling on the feasibility of starting a business; (2) education in established management principles and practices; (3) access to veteran business support networks; and (4) ongoing and continued technical assistance such as with certification application and/or contract procurement assistance. EAC Centers have also formed linkages with many different veteran organizations, support groups, hospitals and agencies across the state.

- **NYS Business Mentorship Program** - Business Mentor NY is the state's first, large-scale, hands-on mentoring program geared to help all entrepreneurs and small business owners. The program allows small businesses to view and search profiles of over 500 experts in various fields, to find a volunteer mentor to help solve problems and grow their business. Small business owners and entrepreneurs find mentors in three easy steps—1) create a profile; 2) browse mentoring profiles; and 3) reach out to mentors. The Business Mentor NY network includes lawyers, accountants, business consultants, and successful entrepreneurs in various fields who are volunteering their time to help businesses have the confidence to continue growing or maintaining a viable operation. To learn more about Business Mentor NY please go <http://businessmentor.ny.gov/>.

### **D. Performance Goals and Timeline = EAC Application Section V: EAC Project Goals, Item #38, #39, #40, #41.**

EAC funding is administered through a performance-based granting system that is designed to generate measurable concrete results in business creation, sales increases, increased



access to financing, and job creation. EAC Centers are expected to meet or exceed these requirements within the grant year.

**E. Reporting Requirements = EAC Application Section VII: EAC Project Specific Reporting, Item #43**

Grantees awarded under this RFP must prepare and submit progress and financial reports. Reports shall be in a form provided by ESD and shall contain narratives on the EAC program accomplishments, including but not limited to outreach to target market populations, specific client assistance provided, quarterly client statistical reports, coordination and operational linkages with other sources of business assistance, advisory group activity, program modifications, success stories, business plans, program offering, and goals met.

**F. Program Monitoring and Evaluation = included in EAC Application Section VII: EAC Project Monitoring and Evaluation, Item #42**

The **timely completion of tasks**, quality of services provided to clients is a major concern of ESD and is tracked closely. They include, but are not limited to on-site visits, interviews with clients and client satisfaction surveys, and review and verification of reports and data submission in the program year. Funded EAC performance will be evaluated by the following.

Create, maintain and update client files and include documentation of all services and activities provided to each EAC participant. Client files should consist of, but not be limited to, the following:

- a) Intake, update and exit forms;
  - b) Technical Assistance Tracking Forms;
  - c) Evaluation Forms; and
  - d) Other client forms/information (i.e. training, graduation, assessments, surveys, success stories, work plans, etc.);
2. Maintain EAC on-line client database; and
  3. Track the progress of each client throughout the duration of the project and after, if applicable.

Information collected on these forms will be used to measure the impact of the program on individual clients and their businesses. Information collected will be kept confidential and will be used only for statistical purposes and ESD program staff to verify compliance with project goals. Copies of the forms and additional information on reporting will be provided to all awardees.



#### IV. REQUIRED INFORMATION

**This whole section presented the EAC Application Section II Org Background, Items #20 thru #27; and Section III – Implementation, Items #28 thru #34**

Please provide a narrative that includes the following sections in the following order, using the headings listed below. Please limit your narrative to small business assistance in New York State.

**A. Organization Information = Section II: Organization Background - Item #20 thru #27**

**1. General: Describe the following:**

- a. The organization's mission and history, including the number of years of providing technical and entrepreneurship training to M/WBEs and/ or small businesses and efforts to serve start-up firms and expanding businesses; = EAC RFA Application; item #20
- b. a comprehensive strategic plan that contains a 3-year business plan that demonstrates that the organization will have the capacity to operate that will not be dependent upon assistance solely from the Program; = EAC RFA Application; item #24
- c. a plan to coordinate and leverage use of assistance from Program with existing non-state funds; at least 100% of matching funds have to be secured to leverage grant requests; = EAC RFA Application; item #36
- d. The geographic service area/s and/ or targeted populations served by the organization, including any emphasis on startups, expanding businesses, credit risks, other businesses that lack access to credit. Please comment on the distribution of clients served across your geographic service and the percentage of your clients that are located in distressed and/ or highly distressed communities. The types of financial and technical assistance products and services offered and how many clients receive these services each year and how the organization see that growth in the coming year; = EAC RFA Application; item #25
- e. The organization's marketing strategy and outreach coordination with other community-based organizations. Please be specific about how the organization works with other community-based organizations to reach small and M/WBE businesses. Please include efforts to work with women and minority organizations, associations or chambers of commerce. = EAC RFA Application; item #27
- f. The organization's plan to serve clients remotely, in-person (keeping and adhering to social distancing guidelines) and in virtual environments given current COVID challenges. = EAC RFA Application; item #26 and item #31
- g. The organization's plan to serve a greater number of clients by leveraging technology and strategic partnerships; addressing ways that the organization intends to grow its programs and technical assistance services; offering new

financial products and services to assist clients expand into global markets; and serving new geographic areas or a niche industry. = item #33

- h. Describe what the organization sees as their greatest challenges in fulfilling the goals of the program, and how they plan to mitigate these challenges to ensure program success. = EAC RFA Application; Item #40

**B. Project Activities, Results, and Implementation =**

**included in EAC RFA Application Section III: Implementation**

Describe in detail how this grant from ESD would be used:

1. Describe the specific activities that will be undertaken and funded through the project. = EAC RFA Application; Item #29
  - a. Describe in detail the nature of technical assistance to be provided, describe the systems in place to deliver these services, and the ways that such technical/financial assistance will support your organization's training activities. Describe the overall technical/ financial assistance program as well as the specific ways in which ESD grant funds will be used. If the provision of one-on-one technical assistance to businesses is identified as a measurable goal in section 2.b below, such assistance must be substantive and generally should involve face-to face meetings, in keeping with social distancing, if applicable. If face to face meetings are not feasible, please discuss how services will be delivered virtually effectively. Assistance should be provided on business development topics and may include capital structuring and financing plans, financial analysis, marketing, and the assistance with the preparation of business plans, retention and survival plans for those facing unprecedented challenges due to COVID-19, financial statements and applications for financial assistance, expansion strategies, business going digital or virtual strategies, and developing an exporting plan. Please indicate the number of businesses to which your organization will provide TA, and the percentage of clients that will receive. = EAC RFA Application; Item #28, item E29, and item #31,
  - b. If proposing activities open to the public such as workshops and seminars (while keeping social distancing guidelines, if applicable), describe those specific actions that will be taken to ensure the participation of minorities and women and efforts that will be taken to continue to engage participants once the event ends, as well as tracking business outcomes. = EAC RFA Application; item #32
  - c. Identify the reasons that your organization requires grant assistance in order to undertake these activities. = EAC RFA Application; item #34
  - d. Identify any other entities involved in the project (other community development organizations; units of local, state or federal government, etc.) and describe the nature of their involvement. EAC RFA Application Section IV: Budget Item #35 – and subsections #2 & #3

- e. Identify any and all subcontracting opportunities or consultants associated with this project and explain how MWBEs and Service-Disabled Veteran-owned Businesses (SDVOBs) would be utilized. **EAC RFA Application Section III: EAC Project Implementation - items #32 and #33; and Section IV: Budget Item #35**
2. List the specific goals that the organization will achieve as a direct result of the requested grant funding and provide a timeline for the project. **EAC Application RFA Section V: EAC Project Goals, item #38 and item #39**
  - a. List the methodologies employed to achieve the measurable outcomes and the economic impact to be achieved as a direct result of ESD grant funding. These goals should be realistic and achievable based on the applicant's experience in operation as an EAC. The proposed goals should reflect only the funding being requested. Applicants may also describe goals for the organization as a whole and the ways that ESD's grant funds would contribute to the attainment of these broader goals. **= EAC RFA Application Section III: items #28, #29 and #30**
  - b. Describe how these goals compare to the organization's achievements in the past three years. **= EAC RFA Application; Section III: Item #28**
3. Provide a detailed budget for the project. **= EAC RFA Application; Section IV: Budget – Items #36 to #38**
  - a. Include funding sources, personnel service costs (with job title and description), consultant fees (identify consultant if known), and a breakdown of all costs related to providing Technical Assistance, loan capital/ loan loss reserve, or institutional capacity. **= EAC RFA Application; Section IV: Budget Items #34, #35, and #36**
  - b. Describe the ways, if any, that ESD's grant finds would leverage other revenue sources. **= EAC RFA Application; Item #35 Matching Funds**
  - c. Add sources of match and utilization of match into the budget provided. A minimum of 100% non-State sources is required to be provided for any request of funds from this RFA. **= EAC RFA Application; item #35**
4. Provide the following: **The following are included inside the formal application**
  - a. Completed Exhibit A: Cover Sheet - **EAC RFA Application; Section I: Organization Information # 1-18**
  - b. Complete Exhibit B: Proposal Summary **= EAC RFA Application; Sections II, III, VII, VIII, IX.**
  - c. Complete Exhibit C: Proposed Budget **= EAC RFA Application; Section IV**
  - d. Complete Exhibit D: Project Description – Tasks & Timeline **= EAC RFA Application; Sections V and VI**
  - e. Annual Financial statements for the past three years, including a draft of the applicant's internal statements or the most recent interim statements, if annual statements are more than 12 months old. **= EAC RFA Application; Section II: Background, item 22**

- f. If the applicant has previously received ESD funding through the EAC Program, attach: - **EAC RFA Application; Section I: Organization Information, item 19**
- A copy of the FY19/20 4th Quarter final narrative report and (GDA Exhibit B, page 1 of 3 ONLY without the attachments); and 3<sup>rd</sup> Quarter Report FY20/21

**V. SELECTION CRITERIA = condensed in EAC RFA Application introduction pg. 3 - Selection**

- A. ESD will balance individual application scores with priorities for geographic distribution across NYS. The evaluation criteria will include the following:
1. Completeness of the application.
  2. Organizational capacity, stability, feasibility and impact of proposed activities.
  3. The applicant's record in meeting the performance goals, timelines and reporting requirements established under previous EAC Assistance Program awards from ESD, if any. ESD may choose not to consider applications from organizations that are not in compliance with the contracting and reporting requirements of previous EAC Assistance Program awards, or that have substantial funding available through previous awards.
  4. Compliance of the application with the "Rules and Guidelines" section and other terms and conditions of this request for applications.
  5. The applicant's record in meeting the performance goals, timelines and reporting requirements established under previous EAC Assistance Program awards from ESD, if any. ESD may choose not to consider applications from organizations that are not in compliance with the contracting and reporting requirements of previous EAC Assistance Program awards, or that have substantial funding available through previous awards.
  6. The applicant's operating budget and institutional capacity for using grant funds effectively.
  7. Applicant's ability to leverage other non-state funds.
  8. The applicant's capacity to illustrate a strategic plan and describe how ESD's assistance will help the grantee achieve this plan.
  9. Applicant's ability to sustain and propose a plan to expand a strong lending base, geographic coverage, underwriting capacity, deal-sourcing capacity and a low default ratio.

**B. Additional Considerations**

1. If ESD does agree to fund such Follow-on Activities, no new grant funds awarded pursuant to this RFA for such activities will be disbursed until the similar activities funded through existing agreements have been completed in accordance with the terms of such agreements. ESD alone will determine whether proposed activities qualify as Follow-on Activities.
2. By submitting its application, each applicant authorizes ESD to contact any and all other persons identified in its application or in any investigation conducted by or on behalf of ESD or the State and obtain the release of pertinent financial and other

information, as well as to obtain verification of the information provided by each applicant.

3. ESD will not be held liable for any costs incurred by any applicant for work performed in the preparation and production of an application, nor for any work performed prior to written authorization from ESD to proceed. All applications submitted will become the property of ESD.
4. ESD reserves the right to:
  - a. Reject any or all applications received;
  - b. Award grants in any amount;
  - c. Require the submission of modifications or additions to applications as a condition of further participation in the selection process; and
  - d. Amend this request for applications.

## **VI. SUBMISSION OF APPLICATIONS**

### **EAC RFA Application pg. 4 Submission of two part Application**

- A. Please submit a zip folder including a PDF of each section of the application to [EAC2122RFA@esd.ny.gov](mailto:EAC2122RFA@esd.ny.gov), as well as an original copy of the entire application in addition to a thumb drive of the same to the address below.

- Please make sure that all documents submitted adhere to the following naming convention outlined in the example below:
- OrgName\_EAC2122RFA\_Name of Document\_file1
- OrgName\_EAC2122RFA\_FinancialStatements2018\_File2
- Etc.

## **VII. DEFINITIONS – EAC RFA Application Section III: Implementation of EAC Project**

For the purposes of this Application for Assistance the following words or terms shall mean as follows:

### **A. Small Businesses**

A small business shall be deemed to be one which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons.

### **B. Minority Business Enterprise (“MBE”)**

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on

the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

C. Minority Group Member

A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

D. Women-owned Business Enterprise ("WBE")

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

G. M/WBE Certification

The official determination by the New York State Division of Minority and Women's Business Development of a business enterprise as a bona fide minority and/or woman-owned business enterprise.

For more information on M/WBE certification, please see our website at: [www.esd.ny.gov/mwbe.html](http://www.esd.ny.gov/mwbe.html) or call (1-800-782-8369) for more information.

H. Technical Assistance

Business technical assistance is provided to an entrepreneur to address ongoing or specific challenges or needs, such as the development of a business plan or the resolution of a production or marketing problem. When a business is in formation,

monitoring will help define specific and/or ongoing needs early. This assistance often is on a one-to-one basis in a consulting format.

Technical assistance may also be provided to assist clients in obtaining State M/WBE Certification.

I. Institutional Capacity/ Capacity Strengthening

Institutional capacity building is defined as the provision of technical or material assistance designed to strengthen one or more elements of organizational effectiveness. The elements of organizational effectiveness include governance, management capacity, human resources, financial resources, service delivery, external relations and sustainability. Examples include the purchase of software, training of staff, conducting research studies for expansion or growth and marketing.

J. New York Prequalification

The Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the execution of a contract or a contract amendment. For additional information, please refer to [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov).

**VIII. QUESTIONS - EAC RFA Application Introduction, page 5**

- A. All questions, comments, requests for clarification or any other communication regarding this Application for Assistance must be submitted by email to: [EAC2122RFA@esd.ny.gov](mailto:EAC2122RFA@esd.ny.gov) no later than April 8, 2021.
- B. In addition, any changes, additions or deletions to this Request for Application will also be posted on the Contract Reporter, along with the electronic version of this Request for Application. Respondents should note that any necessary clarification must be sought by the deadline for questions set forth in the "Schedule of Dates" section in this Request for Applications.
- C. Applicants are urged to check NYS Contract Reporter frequently for notices of any clarification of or changes, additions, or deletions to this Request for Applications.

**IX. GENERAL PROVISIONS –EAC RFA Application: Submission of Two-Part Application, page 4**

The issuance of the RFA and the submission of an application by a firm or the acceptance of such an application by ESD does not obligate ESD in any manner. ESD reserves the right to:

- A. Amend, modify or withdraw this RFA;
- B. Revise any requirement of RFA;
- C. Require supplemental statements or information from any responsible party;
- D. Accept or reject any or all responses hereto;
- E. Extend the deadline for submission of application hereto;



- F. Negotiate potential contract terms with any applicants to this RFA;
- G. Discussions with any applicant to this RFA to correct and/or clarify application which do not conform to the instructions contained herein;
- H. Cancel, or reissue in whole or in part, this RFA, if ESD determines in its sole discretion that it is its best interest to do so; and
- I. Extend the term of any agreement on terms consistent with this RFA.

ESD may exercise the foregoing rights at any time without notice and without liability to any applicant or any other party for its expenses incurred in preparation of applications hereto or otherwise. All costs associated with applying to this RFA will be at the sole cost and expense of the applying firm.

All information submitted in response to this RFA is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, all applications may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

**Grantor Staff** *EAC RFA Application Section IV Budget: Item #36 personnel*

Grantor staff assigned to work on this project shall be subject to approval by the ESD Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Grantor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Grantor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and sub grantors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFA is intended to secure the professional services of the Grantor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Grantor.

The Grantor agrees not to subgrant any of its services, unless as indicated in its proposal, without the prior written approval of ESD's Director or Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subgrant. All employees of the Grantor,

or of its Sub grantors, who shall perform Services under this grant shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Grantor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

**X. SUBMISSION REQUIREMENTS.**

*EAC RFA Application: Section IX Required Disclosures and Certifications*  
**PROCUREMENT FORMS AND REQUIREMENTS.**

**a. Vendor Responsibility Questionnaire. *EAC RFA Application: Item #44***

All Respondents to this RFA must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFA, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFA.

To assist in the determination of responsibility, ESD requires that all respondents to this RFA register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your application.

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website

([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm))

and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

**b. New York State Prequalification System for Grants Contract Vendors**

*EAC RFA Application: Item 46*

As part of Governor Cuomo's initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013. The Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the execution of a contract or a contract amendment.

Based on the above information, you are required to complete the steps outlined below to receive an executed contract or contract amendment. If you are not the appropriate contact for this communication, please forward to the person in your organization responsible for the management of grant funding. Send any questions to Greta Carter-Williams, ESD's program representative, at [gcwilliams@esd.ny.gov](mailto:gcwilliams@esd.ny.gov) or email [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with Prequalification in the subject line.

**Register with the Grants Gateway**

*EAC RFA Application: Item #46 Not-For-Profit Organizations*

1. The Registration Form is available for download at [www.grantsreform.ny.gov](http://www.grantsreform.ny.gov). The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled "Click HERE to access the Portal or browse for more information below".
2. Include your State Financial System ("SFS") Vendor ID on the Form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
3. All registrations must include an Organization Chart in order to be processed.
4. Mail the completed Registration Form, Organization Chart that shows the Head of your Organization, and Substitute W-9 (if new vendor) to:  
Division of Budget - Grants Reform  
Agency Building 1 - 5th Floor  
Empire State Plaza, Albany, NY 12224

5. When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.
6. Associate your organization with a State agency (ESD) by clicking on Organization(s) and then selecting Organization Information; complete all required fields.
7. Complete the Document Vault by uploading requested documents and answering all questions.
8. Upon completion of the Document Vault, submit it for review and prequalification.

If you believe your organization has submitted its Prequalification application and has submitted any requested documents omitted from your registration, please contact ESD's program representative or the Grants Reform Team by emailing [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with Prequalification in the subject line.

**c. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN – Portions referenced in EAC RFA Application Section IX: Non-Discrimination and Contractor and Supplier Diversity, Item #45**

**NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-owned Business Enterprises ("MWBE") and the employment of minority group members and women in the performance of ESD contracts.

**BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBEs Portions are referenced in EAC RFA Section III: Implementation - Participation of MWBE and Veterans, item #32**

For contracts resulting from this solicitation, ESD will establish a goal for MWBE participation based on the scope of work and project description identified in the RFA response. Such contracts will set forth additional requirements that will encourage business participation opportunities for MWBEs. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFA, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFA pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be

applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFA, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or application, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or application. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or application.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

#### **Equal Employment Opportunity Requirements**

By submission of a bid or application in response to this solicitation, the respondent agrees with all of the terms and conditions in [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or application.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

## **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.



In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

#### **Contract Goals**

- A. For purposes of this solicitation, ESD will establish a goal based on the scope of work and project description identified in the RFA response. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

#### **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that

is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or application.

- E. ESD may disqualify a Bidder's bid or application as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

#### **Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

#### **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

#### **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the

Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

General inquiries or questions relating to aforementioned policies, SDVOB participation and the goals specified herein may be addressed to OCSD at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

**d. INSURANCE REQUIREMENTS**

The Selected Respondent will be required to provide the following insurance (at a minimum and to the extent applicable):

1. Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
2. In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
3. Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
4. Must show evidence of Disability insurance coverage at State statutory limits;
5. Professional Liability (Errors & Omissions) Insurance of \$1 million;
6. Empire State Development must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of Empire State Development.